IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4420 of 1999

to

FIRST APPEAL No 4427 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

RUDA KALA KOLI

Appearance:

1. First Appeal No. 4420 of 1999

MR AD OZA, GP for Petitioners No. 1-2

RULE SERVED BY DS for Respondents No. 1,2/1-2/4

MR VIPUL S MODI for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT
and

MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 12/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. In this group of 8 appeals u/S. 54 of the Land Acquisition Act, 1894 (Act) the appellants original opponents - Acquiring Authorities have challenged the common judgment and resultant awards recorded by Extra Assistant Judge, Banaskantha District at Palanpur dated 2/5/1996 arising out of Land Reference Cases Nos. 190 to 197 of 1988.

2. The respondents who are the original claimants land owners whose agricultural lands came to be acquired pursuant to the notification u/S. 4(1) of the Act published on 21/7/1980, followed by notification u/S. 6(1) for the purpose of Sipu Irrigation Project. The Land Acquisition Officer offered an amount of Rs.5.50 and Rs.3.50 per sq. mtr. for irrigated and non-irrigated lands acquired respectively by his award dated 9/10/1985.

3. Being dissatisfied by the award of the Land Acquisition Officer, the original claimants sought reference and, therefore, references came to be made by the Collector to the District Court, Banaskantha at Palanpur being Land Reference Nos. 190 to 197 of 1988. The Reference Court after considering the facts and circumstances and evidence on record and hearing the learned advocates appearing for the parties, reduced the market value and fixed at Rs.4/- for irrigated land and Rs.3.50 for non-irrigated land respectively by the common judgment dated 2/5/1996. Therefore, this group of appeals is at the instance of the Acquiring Authorities.

4. We have heard learned advocates appearing for the parties. We have examined the evidence on record and also the past awards of the Reference Court and confirmed by this Court. The agricultural lands acquired are situated in village Nani Mahudi. The date of notification u/S. 4(1) which is important for the purpose of assessment and fixation of the market value is 21/7/1980. About 15 awards in respect of the same purpose and project like that Sipu Irrigation Project have been placed before us for our consideration. We have also exhaustively examined them.

4. The claimants relied on the award in Land Reference Case No. 197/1988 and also on the evidence of

the applicant - claimant of that case Bhuraji at Exh. 16 on behalf of all claimants. They also placed reliance on the evidence of expert witness Shri Chaturbhai G. Patel at Exh. 38. Whereas opponents examined one witness Shri Ashokkumar at Exh. 52 and also Land Acquisition Officer, Sipu Project and also evidence of B.U. Ghori at Exh. 61. They also placed reliance on the documentary evidence. We have considered and examined the entire documentary as well as oral evidence.

5. The only short question which is placed in focus in this group of appeals is as to whether the amount awarded by the Reference Court is in any way on a higher side or excessive or not. The learned advocate Mr. Modi while appearing for the original claimants in view of the earlier awards in respect of the same project and other evidence, fairly stated that the amount of Rs.3/- per sq. mtr. in respect of irrigated as well as non-irrigated land would meet the ends of justice. In the light of the evidence on record and considering the earlier 15 awards which have been placed for our consideration in respect of the same project, we are of the opinion that the fair concession and submission made on behalf of the original claimants - respondents is quite justified. This is the sole question which is raised before us. Therefore, the appeals are required to be partly allowed and consequently the resultant awards are required to be modified.

6. The Reference Court has directed to deduct 5% of the amount of compensation in case of acquisition of new tenure. This common direction given in all Land Reference Cases and in the common judgment by the Reference Court, is required to be quashed and modified in the awards in view of the decision of the Hon'ble Supreme Court in State of Maharashtra v/s. Babubhai Govindbhai AIR 1996 SC 904. In absence of any cross objection or counter appeal, we exercise our powers under Order 41 Rule 33 of the C.P.C.

7. In the result, the appeals are partly allowed and the market value of the lands of the original claimants respondents before us, is assessed and fixed at Rs.3/- sq. mtr. in respect of both types of lands. So far as the market value of waste land acquired from the possession of the claimants is concerned, it is confirmed. We may clarify here that the claimants obviously shall be entitled to all statutory benefits available and permissible under the Act including an amount of interest on solatium in view of the decision of the Constitutional Bench of the Hon'ble Supreme Court

rendered in Sunder v/s. Union of India - Appeal (Civil) No. 6271 of 1988 dated 19/9/2001. Parties are left to bear their own costs.

8. The appellants are directed to pay or deposit the amount of compensation to the respondents original claimants as directed by us within a period of three months from today. Impugned common judgment and award shall stand modified to the aforesaid extent.

[J.N. BHATT, J.]

[AKSHAY H.MEHTA,J.]

* Pansala.